

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHRYN VERHOYE,

Plaintiff-Appellant,

v

BALAGUER CORPORATION, FLEX CABLE  
COMPANY, RICHARD BALAGUER, and  
HOLLY STEVENS,

Defendants-Appellees.

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UNPUBLISHED

January 24, 2003

No. 237135

Oakland Circuit Court

LC No. 00-024461-NO

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff began working for Balaguer Corporation<sup>1</sup> in January 1997 as an administrative assistant to Richard Balaguer, the president and owner of the company. Her duties included typing, answering the telephone, and monitoring the fax machine. She received a positive performance review and regular salary increases. In December 1999 plaintiff broke her foot during the course of her employment. She went off work and received worker's compensation benefits. During a portion of plaintiff's absence Richard Balaguer hired temporary workers to fill her position. Subsequently he ceased this practice and divided plaintiff's duties among several other employees. On February 3, 2000 plaintiff's physician released her to return to work. On that date defendants notified plaintiff that her position had been eliminated.

Plaintiff filed suit alleging retaliatory discharge in violation of MCL 418.301(11), age discrimination in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and disability discrimination in violation of the Persons With Disabilities Civil Rights Act, MCL 37.1101 *et seq.* Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's claim that her position was eliminated in retaliation for her having filed a worker's compensation claim could not be substantiated. Defendants relied on Richard

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<sup>1</sup> Defendants' brief indicates that Balaguer Corporation does business as Flex Cable Company.

Balaguer's deposition testimony that he phased out several positions in order to streamline operations and that he concluded that plaintiff's position could be eliminated after dividing her tasks among other employees, and on the deposition testimony of the Assistant Comptroller, who stated that Balaguer informed her prior to February 7, 2000 that plaintiff's position would be eliminated.

In response, plaintiff argued that based on a coincidence of events, i.e., the elimination of her position without warning just as she was scheduled to return to work, a genuine issue of fact existed as to whether she was discharged in retaliation for having filed a worker's compensation claim. The trial court granted the motion, finding that plaintiff failed to create a genuine issue of fact with respect to her worker's compensation retaliation claim.<sup>2</sup>

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, an employer may not discharge an employee or in any manner discriminate against an employee on the basis of the employee's act of filing a claim for worker's compensation benefits or exercising a right afforded by the WDCA. MCL 418.301(11). The burden of proof is on the employee to establish an illegal adverse employment action by the employer. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 470; 606 NW2d 398 (1999). The plaintiff must show that the employer acted adversely in retaliation for the plaintiff's exercise of his rights under the WDCA, and that any legitimate reason for the action put forth by the employer was in fact merely a pretext for retaliation. *Lamoria v Health Care & Retirement Corp*, 230 Mich App 801, 817-818; 584 NW2d 589 (1998), vacated 230 Mich App 801; 584 NW2d 589 (1998), reasoning adopted by conflict panel 233 Mich App 560; 593 NW2d 699 (1999).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition of her retaliation claim. We disagree and affirm. Plaintiff correctly observes that defendants decided to eliminate her position while she was off work recovering from a work-related injury; however, she has failed to put forth evidence to create an issue of fact as to whether defendants acted in retaliation for her exercise of her rights under the WDCA. Defendants acknowledged that for a time temporary employees filled plaintiff's position, but that Richard Balaguer concluded that plaintiff's position could be eliminated after her tasks were divided among other permanent employees. Plaintiff produced no evidence to demonstrate that this proffered reason was not legitimate.

Furthermore, plaintiff's contention that other employees saw their positions eliminated after they exercised their rights under the WDCA is unsubstantiated. The trial court properly found that plaintiff failed to produce sufficient evidence to create an issue of fact as to whether

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<sup>2</sup> The trial court's order dismissed plaintiff's claim in its entirety. Plaintiff appeals only the dismissal of her claim of retaliatory discharge.

defendants took illegal adverse action in retaliation for her exercise of her rights under the WDCA. *Chiles, supra*; *Lamoria, supra*.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot